IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/10/2003

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.572 of 2002

Tamil Nadu Electricity Board
Engineers' Association
'Electricity Avenue'
rep. by its General Secretary
G.Balakrishnan
No.793, Anna Salai
Chennai 600 002 ..... Petitioner

-Vs-

1.The Tamil Nadu Electricity Board
rep. by its Secretary
793, Anna Salai
Chennai 2

2.The Chairman
Tamil Nadu Electricity Board
793, Anna Salai
Chennai 2 ..... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, as stated there in.

For Petitioner : Mr. Chairman Chelliah
Senior Counsel
for M/s.P.Karunakaran

For Respondents : Mr.V.Radhakrishnan for TNEB

:ORDER

This writ petition has been filed for the issuance of the writ of certiorari, to call for the records in (Permanent)B.P.(F.B)No.59 (Secretariat Branch) dated 18.07.1998 of the respondents and to quash the same.

2. In the affidavit filed along with the writ petition it is stated as follows:
(i) In the Tamil Nadu Electricity Board, graduate Engineers are

directly recruited as Assistant Engineers. The diploma holders are appointed as Technical Assistants and Junior Engineers Grade-II; if they acquire B.E. Degree or A.M.I.E., they are selected as Assistant Engineers by internal selection. Due to wage revision made from time to time, the internally selected AEs, juniors, are getting more pay than the directly recruited AEs, seniors, due to the grant of additional increments, on the basis of the number of years of service in the department, under Clause 6(4) of the (permanent) B.P.(FB) No.59 dated 10.0 7.1998. The direct recruits are prohibited from claiming rectification of pay anomaly. The anomaly in the pay structure is unreasonable, unjust and also arbitrary.

(ii). A specific example has been given as follows:

Sl.| Description	Directly Recruited	Internal Selection
1. Name	Er.N.Mohanasundaram	Er.A.Mahendran
2. Serial Number	436	568
3. Date of Joining as Assistant Engineer.	10.12.1980	26.07.1982
4. Date of Promotion as AEE	24.06.1993	28.07.1994
5. Pay as on 01.12.1988	Rs.2360/-	Rs.2280/-
6. Pay as on 01.12.1992	Rs.3135/-	Rs.3025/-
7. Pay as on 01.10.1994	Rs.3465/-	Rs.3365/-
8. Pre-revised pay as on 01.12.1996	Rs.3685/-	Rs.3575/-
9. Revised Scale as on 01.12.1996	Rs.10,775/-	Rs.11,375/-

Many such directly recruited AEs who were seniors both in the cadre of

AE as well as AEE are given lesser pay than their juniors, who were subordinates to them when they joined as Assistant Engineer.
(iii) The representations made against that were returned; they were also instructed to avoid such baseless representations; Juniors cannot get more pay than the seniors.
(iv) As per Service Regulation No.87(10A) the appointment by internal selection should be deemed direct recruitment for all purposes including reservation of appointment with reference to regulation 89(b).
(v) During the wage revision in 1994, the pay anomaly between the directly recruited employees with internally selected employees were rectified by suitably modifying the pay scale.

3. The counter affidavit filed on behalf of the first respondent is as follows:

(i) The internal selection is resorted in the Board not only for Assistant Engineer. category, but also for the categories such as Junior Assistants, Typist, Steno-typist, Assessor and Technical Assistants from among the qualified employees in the other cadres. In all these cases, the period of service rendered in the previous post is counted for pension; the pay drawn in the previous post has been protected in the new post. Such internally selected persons, by virtue of their earlier service in the Board, would draw more pay than the directly recruited employee holding senior position. That is not an anomaly in the real sense. That cannot be complained 'as juniors getting more pay'. They can compare only those juniors who were directly recruited like them.
(ii) The pay protection is a benefit, consciously given by the Board, to its workmen who are recruited from other posts through internal selection; that is governed by the (Permanent)Board Proceedings (F.B).No.59 dated 10.07.1998. It covers all the employees of the Board.
(iii) The fixation of pay on pay revision was generally on the lines followed by the Government. When workmen were recruited to another higher post internally, there were occasions that such internally selected / appointed persons were drawing higher pay in the previous post itself than the minimum of pay scale applicable to the post to which he was selected. In such cases the previous pay was protected in the new post. The senior in the new category cannot claim pay anomaly citing the internally recruited juniors, whose higher pay was due to the earlier period of service.
(iv) In the 1996 wage revision, it was assumed among other things that the benefit of one increment for the first seven years of regular completed service and thereafter every one increment for every 10 years of service was to be given as service weightage after fitment in the new scale of pay. By virtue of the above provision, the employees with longer years of service should get more number of increments as service weightage benefit than those with lesser number of years of service.

(v) The petitioner association requested rectification as per Clause 6(4) of the wage revision. It was not accepted. It is possible that workmen who were working under the directly recruited Assistant Engineers, are drawing more pay; that is because of their longer years of service; that cannot be avoided.

(vi) The notion that the pay of the B.E. Degree holders, who were directly recruited to the category of Assistant Engineers, should be higher than other diploma holders who were internally selected and recruited to the post of A.E. after acquiring the same B.E. qualification, however, longer their earlier service be, is ill conceived.
(vii) The seniority of an employee is merely in relation to the category to which he belongs, whereas the service weightage is allowed taking into account the total service of an employee in all cadres, from the date of joining in the Board.
(viii) Even in the 1984 Wage Revision also, a similar service weightage was given. Selection to the post of Assistant Engineers are made by direct recruitment as well as by internal selection.
(ix) The paragraph-6(4) of (Permanent) B.P.(F.B)No.59 (SB) dated 18.07.1988 is not arbitrary.
4. (i) In the rejoinder to the counter, it is stated that the matter relates to anomaly that exists between the B.E. degree holders, who joined as Assistant Engineers and the internally selected Assistant Engineers who acquired their B.E. qualification later (after joining service). The anomaly is in the pay recei ved in the cadre of A.E. and it arises due to the wage revision made by the Board with effect from 01.12.1996. These type of service weightage increments were not given in the wage revision made in 1988 and 1992. Internally selected A.Es who were drawing equal or lesser pay than the directly recruited AEs before the wage revision, are getting more pay than the directly recruited seniors even though their seniority is far below in the cadre of A.E. The wage revision has created an anomalous situation within the same cadre between those belonging to internal selection and those direct recruits; that is contrary to the Fundamental Rules of Tamil Nadu Government. The petitioners are not comparing those types of internally selected Engineers who were drawing more pay than the direct recruits at the time of selection as AEs. The petitioners are claiming pay anomaly with those internally selected Assistant Engineers who have been drawing lesser pay than direct recruits even at the time of internal selection as Assistant Engineers and continue to draw lesser pay till the wage revision. If service weightage to a junior is given in the wage revision, then at least the pay of the seniors should be stepped up to that of the juniors. In 1996 wage revision, Clause 69(4) is introduced by that, directly recruited seniors cannot claim pay anomaly with internally selected juniors. This anomaly would continue in all future pay revisions.

5. The learned Senior counsel, Mr. Chairman Chelliah appearing for the petitioner, submitted that a person may be appointed to a post in the particular cadre of service, in a scale of pay by efflux of time, he gets increments and reaches the maximum scale of pay in that Cadre. In the mean while, he may also get promoted to a higher Cadre which has a different scale of pay. Direct recruitment to the higher post is also possible. A person directly recruited to the higher cadre of service will get initially the minimum in that pay scale. This minimum scale of pay may be lesser than the maximum in the pay scale of the lower cadre. The person who reached the maximum in the scale of pay in the lower cadre, when promoted to the higher cadre will get more pay than a person directly recruited to the higher post. Under such circumstance, even though a directly recruited person is senior in that cadre of service, the junior by virtue of his long service in the lower

cadre could get more pay in the newly promoted cadre. There is no illegality or objection insofar as this aspect is concerned. On the other hand, when a person promoted from the lower cadre, was getting lesser salary in the promoted cadre, than his senior who was directly recruited to that cadre, then that position cannot be altered subsequently. When a pay revision is made, this position, that the senior getting more pay than his junior, cannot be altered. In the new wage revision, the fixation should be done in such a manner that senior can never be made to draw less pay than his junior in that cadre. But, by 1996 wage revision, this has been violated. By Clause-6(4), after fixation in the new scale of pay, again increments are granted on the basis of the total number of years of service in the Board in all the cadres. Such grant of additional increments are not valid.

6. The counsel for the petitioners further submitted that a person who entered the service of the Board as Wireman could have put in number of years of service in the cadre of wireman; he could have obtained the B.E. degree and after some years and therefore he could be promoted to the cadre of A.E; and subsequently as A.E.E. When fixing the increment under Clause 6(4), the entire period of service right from the date when he entered as Wireman is taken into account and additional increments are granted after fixation in the new scale as per the wage revision. By this, a person who entered the higher cadre of service, A.E, many years prior to the those who were promoted from the lower cadre, though his pay was higher than the promottee when such promottee entered the cadre of A.E., by giving service weightage, it affects the pay of the seniors in the cadre of A.E. This is an anomaly and this violates the principle of equality. Therefore, this provision is unconstitutional and hence it has to be quashed.
7. The learned counsel Mr.Radhakrishnan appearing for the respondents contended that Tamil Nadu Electricity Board was found on 01.07.1957 . From that day, there were 9 wage revisions. Last of which was with effect fro 01.12.1996. In the service of Electricity Board, a number of cadres exists and the posts are filled up by direct recruitment as well as by internal selection, i.e., there are number of entry levels in the Board. Insofar as this present case is concerned, B.E. Graduates are directly recruited to the cadre of Assistant Engineer(AE). The Diploma holders are recruit ed directly in the cadre of Junior Engineers(JE). In case, the diploma holders gets the degree they can be promoted to the post of Assistant Engineer by internal selection. When so selected, the pay drawn by the Junior Engineers will be protected. Further, the earlier service in the Board as JE is also given weightage. A Junior Engineer who has put in 17 years of service, is given two increments in the cadre of AE. Only in order to give service weightage to those who are promoted by internal selection, this Clause 6(4) has been introduced. Even during the earlier wage revisions, this method was adopted. There is no illegality in giving the service weightage to the persons who were promoted by internal selection. There is no violation of equality Clause and the principle of junior getting more pay than the senior does not apply to this case. Therefore, the contention that Clause 6(4) of the new wage revision is unconstitutional is not acceptable and hence the writ petition has to be dismissed.

8. Whenever wage revision is made, and the pay is increased, a method

is adopted by which the fitment into the new scale of pay is done. By that method, a person who has put in long years of service in the cadre may have some disadvantage than the person who was newly recruited to the same cadre. This is because, the minimum in scale of pay for the cadre is usually increased. Insofar as the newly recruited candidates are concerned, they are fixed at the minimum of the new scale of pay. But, the person who have put in long years of service would have already exceeded the minimum in the new scale of pay. Therefore, taking into account the pay that was drawn by them in the old scale of pay in the same cadre, a few increments are granted in the new scale of pay; and they are fitted in the new scale of pay according to the fitment table. Once the pay in the new scale is so fixed, thereafter there cannot be any increment on the ground of service weightage; such increments are impermissible; and it is not in accordance with law and it violates equality clause.

9. A specific instance has been given as an example in the affidavit showing how the anomaly has occurred. In the example given in the affidavit, a directly recruited person and a person who was internally selected to the same cadre of Assistant Engineer (A.E.) has been given. The direct recruit Mr.N.Mohanasundaram was recruited as AE on 10.12.1980; He was promoted as AE on 24.06.1993; His basic pay on 01.12.1988 was Rs.2,360/-. The other person, Mr.Mahendran was promoted to the cadre of A.E. through internal selection on 26.07.1982 (2 years after Mr.Mohanasundaram); he was promoted to the next higher cadre of AEE on 28.07.1994 (1 year after Mr.Mohanasundaram was promoted as AEE.). Mr. Mahendiran's pay on 01.12.1988 in the cadre of AE was Rs.2280/-. That is, it was less than that of Mr.Mohanasundaram. On 01.12.1992, the basic pay of Mr.Mohanasundaraam was Rs.3,135/-, whereas that of Mr.Mahendran was Rs.3,025/-. As on 01.10.1994, the basic pay of Mr.Mohansundaram was Rs.3,465, whereas that of Mr.Mahendran was Rs.3,355/-. The pre-revised scale of pay as on 01.12.1996 of Mr. Mohanasundaram was Rs.3,685/-, whereas that of Mr.Mahendran was Rs.3,5 75/-. But, in the revised scale, because of giving "service weightage" to the internally selected candidate, right from the date of entry to the service of the Electricity Board irrespective of the cadre, Mohanasundaram's basic pay is Rs.10,775/-, whereas that of Mahendran' s basic pay is Rs.11,375/-. This resulted only because of application of the provisions of Clause 6(4) of the new wage revision. Even though Mohanasundaram was appointed directly as AE in the year 1982 and promoted subsequently to the cadre of AEE in the year 1994, and in both the cadres of AE and AEE, Mr.Mahendran, the subsequent promottee from lower cadre, was drawing lesser pay than Mr.Mohanasundaram. After fitment in the new revised scale of pay, since increments were given once again as "service weightage." it results in Mr. Mahendran, getting more pay than Mr.Mohanasundaram. This is a clear case of ' junior getting more pay than the senior'.

10. It is possible and also permissible when Mahendran was promoted as AE to get more pay than Mohanasundaram by reason of his getting higher pay in the lower cadre on the date of entry into the cadre of Assistant Engineer. If that be the case, Mahendran can get more pay than Mohanasundaram in the cadre AE as well as in the cadre of AEE. But, that is not the case here. Mahendran though promoted internally, on the date of promotion, he was getting lesser pay than Mohanasundaram in the cadre of AE. This continued even at the

stage of entering into the cadre AEE. Both in the cadre of AE and in the cadre of AEE, Mr. Mahendran junior to Mohanasundaram was infact getting lesser pay than Mohansundaram. While that be so, suddenly in the year 1996, his pay cannot be more than that of his senior. This anomaly has resulted only because of giving additional increments on the ground of " service weightage" after fitting them in the new scale of pay.

11. It is a basic principle of Service jurisprudence that when a person is promoted to the higher cadre, he becomes assimilated in that cadre of service. If a person so promoted is junior in the cadre and his pay was also lesser than his senior on the date when he was promoted to the higher cadre, that position cannot be altered thereafter. A junior in the cadre who was getting lesser pay than his senior cannot get more than his senior in the very same cadre. If that happens it attracts the rule of "junior getting more pay" and it has to be set right, by increasing the pay of the senior to the same level.

12. It is seen from records that when this anomaly was brought to the notice of the Board, the Board also has originally said that the matter is being considered; but later by letter dated 09.08.2000, it has been rejected. In that, there is a reference to the case of two person namely, Parthasarathy and Parimainthan which is as follows:
"The request has been examined. The senior Thiru B.parthasarathy, Asst. Exe. Engineer/Electrical, Office of the Superintending Engineer/Electrical., Thermal Hydro Project, Chennai is informed that the junior Thiru. V.K.Parimainthan, Asst. Exe. Engineer/Electrical, Office of the Superintending Engineer/Materials Management drawing higher pay than senior only due to higher service weightage rendered by him for 27 years of service and thereby his pay was fixed at Rs.11,675/- with effect from 01.04.1997. The Senior who was lesser service weightage in the revised scale of pay of 1996 cannot cite the pay of the junior for re-fixation of his pay. Hence, his request for re-fixation of pay at Rs.11,675/- with effect from 01.04.1997 on par with his junior is not feasible of compliance."

13. In this case, Mr.Parthasarathy Assistant Engineer, was senior to Parimainthan in the cadre of AE. But Parimainthan was given a higher pay than his senior Parthasarathy "only due to higher service rendered by him of 27 years of service." It is stated in the letter that the senior who has lesser service weightage cannot cite the pay of the junior for re-fixation of his pay. It is not clear as to the pay Mr. Parimaindan was receiving in the cadre of AE and AEE on the date of his entry into those cadres of service. But at the same time, it is clear that increments had been granted in the scale of pay of AEE, on the basis of total years of service in the Board. That is not legal. It violates Article 14 of the Constitution of India.
14. It is the service weightage that results in the periodical increments in the scale of pay. The more number of years of service in a cadre the person gets more increments. When a person is promoted to the higher cadre, he is fitted in that higher scale of pay taking into account his pay in the lower cadre. Thereafter, he becomes assimilated in the new cadre. At the stage of promotion it is possible for the promottee, by virtue of long number of years of service in the lower cadre to get more pay than his senior

in that new cadre. But, after assimilation there cannot be any discrimination shown on the ground of service weightage or length of service in the Board. Once a person is assimilated or absorbed into the new cadre of service, the position of seniority in that cadre cannot be altered. Similarly, the pay received by them cannot also be altered or varied; if the new entrant to the cadre got less than his senior in that cadre, the new entrant shall always get lesser pay than his senior. Even by wage revision, the new entrant cannot get more pay than his senior.

15. On the other hand, if the new entrant got more pay, at the time of entry into the higher cadre, than his senior in that cadre that will continue to get less. That does not violate any rule; and it is perfectly valid. Service Rules do not permit a junior to get more pay than his senior only in this sense. The Service Rules also permit grant of additional increments on the ground of acquiring higher qualifications, such increments are not attract the principle of 'junior getting more pay'. But the number of years of service had already conferred the benefit of service weightage on the employee and he was granted periodical increments in the cadre in which he was serving. That benefit cannot once again be given, after the fitment made in the new scale of pay. That amounts to giving the benefit twice. Such increments are impermissible under the Service rules. Such a provision of granting additional increments on the ground of total number of years of service in the department put up by a person in all the previous and lower cadre of service is nothing but arbitrary. It violates Article 14 of the Constitution of India.

16. If a person puts in more number of years of service in a cadre he gets periodical increments on that basis in that cadre. Thereafter, on promotion he is fixed in the appropriate scale of pay without any detriment to the pay he was receiving in the lower cadre. That is, the service weightage has already been conferred. In the next higher cadre for the purpose of pay the pay he was receiving in the lower cadre alone is material. Once that service weightage is considered and given due consideration and the scale of pay is fixed in the higher cadre, thereafter the very same service weightage cannot be applied for granting increments in the higher scale of pay. Thereafter, the total number of years of service is relevant only for payment of pension. It is irrelevant for granting increments.

17. The principle that a senior must not get less pay than his junior must be followed. In this case, the position is altered because of the provisions of Clause 6(4) in this 1996 wage revision and rectification of anomalies. The definition of senior and junior given in this Clause is not legally valid and for the reasons already stated it is not legally sustainable. A person who had put in 30 years of service from wireman to a Junior Engineer cannot be considered as " Senior" in the cadre of AE, to the person who had earlier entered the cadre of AE. The seniority is only with respect to their placement within the same cadre of service. There is no question of "Seniority" between the two cadres of service; It is a difference in the hierarchy; The person who holds a post in the higher cadre of service is not a " Senior" to a person holding a post in a lower cadre of service; but he is superior officer. The concept "Senior" or "Junior" is applicable only between two persons holding the posts in the very same cadre. But, the definition of senior and junior under Clause 6(4) of the wage revision, militates against this fundamental principle. Therefore, that is invalid and

unenforceable. Therefore, this Clause 6(4) is liable to be struck down, as it violates equality Class and is unconstitutional. Hence it is struck down.
18. In the result, the writ petition is allowed accordingly. No costs.

Index: Yes
Internet:Yes

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To

1. The Tamil Nadu Electricity Board
rep. by its Secretary
793, Anna Salai
Chennai 2

2. The Chairman
Tamil Nadu Electricity Board
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